

## **Memorandum of Understanding Addendum I: Brownfields Redevelopment**

The redevelopment of contaminated, or potentially contaminated, properties (often referred to as "brownfields") provides significant benefits to the protection of human health and safety, the environment and the economy of local communities. To the extent possible, the U.S. Environmental Protection Agency, Region V (Region V) and the Michigan Department of Environmental Quality (MDEQ) agree to mutually exercise their authorities to facilitate the productive redevelopment of brownfields in Michigan. Specifically, the MDEQ agrees to continue to support efforts to promote and implement Region V's brownfields initiatives, whereas Region V agrees to support the MDEQ in the development and implementation of its newly amended cleanup program (Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 et seq., as follows:

With respect to properties in Michigan which are sites that are not proposed or listed on the National Priorities List (NPL) and are not subject to an order or other enforcement action under Superfund law or do not pose an imminent and substantial endangerment to public health or welfare or the environment or an emergency situation, Region V will not plan or anticipate any federal action against a covered party (owner, operator, generator or transporter) under Superfund law when one or more of the following conditions are satisfied:

I. The covered party is a new owner/operator who discloses a Baseline Environmental Assessment (BEA) to the MDEQ and is not otherwise liable for environmental contamination existing on the site. A BEA does not relieve the covered party from its due care obligations under federal and state law.

II. The covered party conducts its activities on the property consistent with an MDEQ-approved remedial action plan (RAP) for closure.

III. The covered party conducts its activities on the property consistent with a written settlement agreement between the covered party and the Department of Attorney General acting on behalf of the MDEQ and/or the State of Michigan.

IV. The covered party is an owner or operator of property (site) which is removed from the Michigan Sites of Environmental Contamination list after MDEQ review of the cleanup actions that have been completed.

Region V and MDEQ acknowledge that the foregoing provisions (I-IV) of Michigan's Part 201 cleanup program provide for: response actions that are protective of human health and safety, opportunity for public involvement, and appropriate oversight and technical assistance.

With respect to properties which are sites proposed or listed on the NPL, subject to an order or an enforcement action under Superfund law or that pose an imminent and substantial endangerment to public health or welfare or the environment or an emergency situation, Region V and the MDEQ will continue to work cooperatively to resolve the concerns of covered parties regarding federal activity under Superfund. Such efforts may include the execution of multi-party agreements with the covered party, consistent with Region V and the MDEQ policies. When considering site specific agreements, Region V will follow the "Guidelines on Agreement with Prospective Purchasers of Contaminated Property" (9835.9).

At sites where both Region V and MDEQ have conducted response activities in furtherance of revitalization, the agencies will attempt to coordinate enforcement actions with respect to the responsible party. In the event Region V and MDEQ have determined that EPA involvement is no longer essential, the MDEQ will have lead responsibility for future response activities and enforcement actions. Region V and MDEQ agree that each agency will have lead responsibility in the recovery of their respective enforcement and response activity costs.

Notwithstanding the above, if under exceptional circumstances, conditions at the property are such that the site poses an imminent and substantial endangerment to public health or welfare or an emergency situation, or in the event the covered party fails to substantially comply or conduct its activities consistent with provisions I-IV above, Region V may, at its discretion or upon referral from the MDEQ, pursue federal action. Region V will consult with the MDEQ and give the MDEQ an opportunity to correct such non-compliance with provisions I-IV, prior to making a determination that federal response action is necessary at any state enforcement lead site. The Region V decision not to take federal action unless the site poses an imminent and substantial endangerment to public health or welfare or emergency situation will apply to both past and future state settlement agreements and enforcement actions.

Region V will continue to provide technical assistance and, at its discretion, financial support to local and state governmental agencies in order to facilitate the redevelopment of contaminated or potentially contaminated properties in Michigan and engender the environmental and social benefits which accompany the revitalization of brownfields.

This Memorandum of Understanding has been developed by mutual cooperation and consent, and hereby becomes an integral part of the working relationship between the EPA and MDEQ.

For the Michigan Department of Environmental Quality

Russell J. Harding, Director  
Michigan Department of Environmental Quality

For the U.S. Environmental Protection Agency, Region V

Valdas V. Adamkus, Regional Administrator Date  
U.S. Environmental Protection Agency